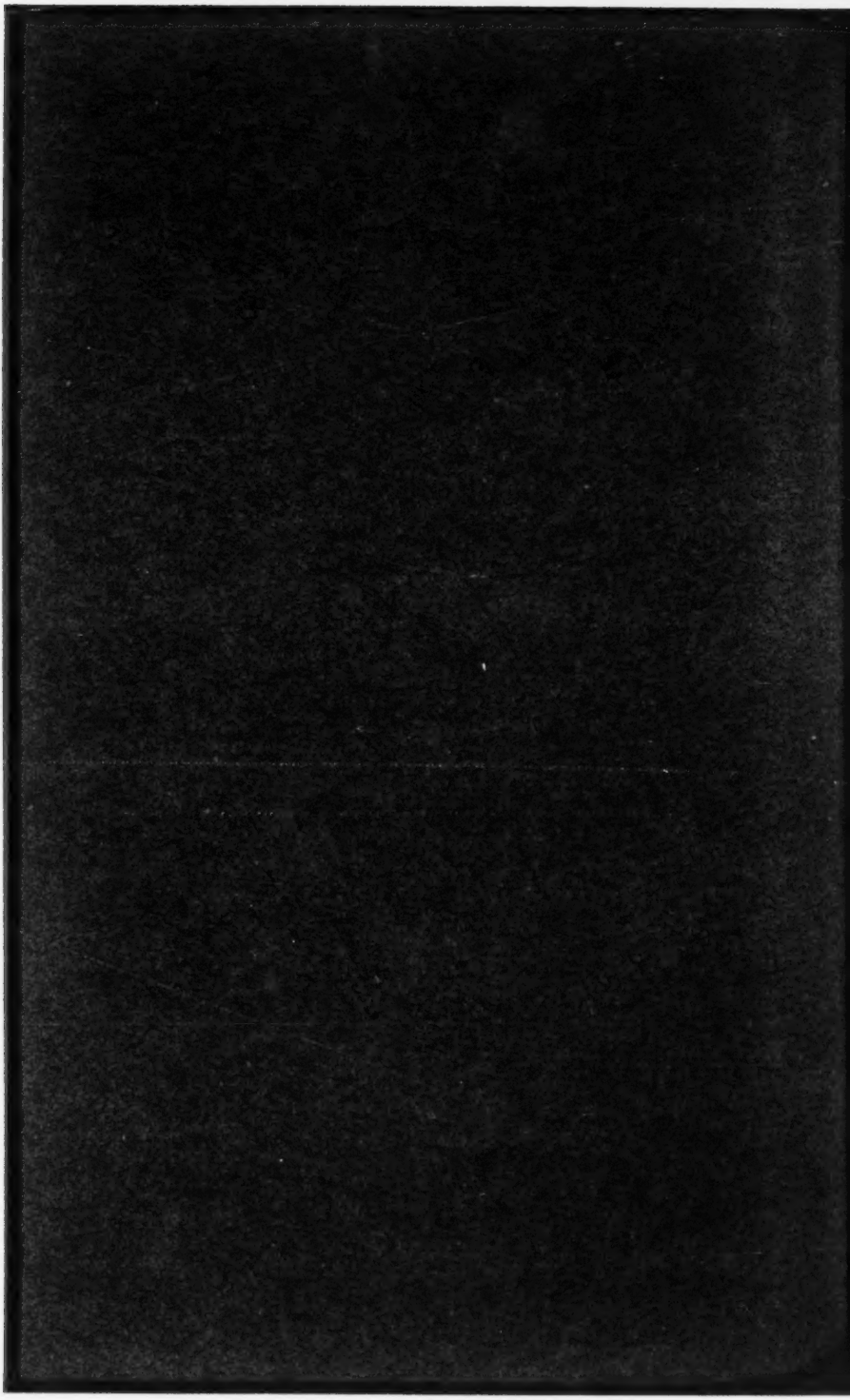

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 351

ANHEUSER-BUSCH, INCORPORATED, PETITIONER

v.

LOUIS J. BECKER, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST UNITED STATES COLLECTION DISTRICT OF MISSOURI, AND COMPANION CASES[1]

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The United States District Court for the Eastern District of Missouri did not render an opinion but entered judgments upon the basis of its findings of fact and conclusions of law (R. 573–586). There-

[1] The style of the cases in the Circuit Court of Appeals is as follows:

No. 11816—*Becker, Collector*, v. *Anheuser-Busch, Inc.*
No. 11817—*Anheuser-Busch, Inc.*, v. *Becker, Collector.*
No. 11818—*Becker, Collector*, v. *Anheuser-Busch, Inc.*

after, upon motion of the Government (R. 600–611), additional findings of fact were entered (R. 611–619). The opinion of the Circuit Court of Appeals (R. 1128–1161) is reported in 120 F. (2d) 403.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered May 29, 1941 (R. 1161). Petition for rehearing was filed June 13, 1941 (R. 1169–1181), and denied June 23, 1941 (R. 1183). The petition for writ of certiorari was filed August 6, 1941. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

No. 11819—*Becker, Collector*, v. *William L. Parker, Receiver of and for Anheuser-Busch Ice and Cold Storage Co., Inc., etc., et al.*

No. 11820—*William L. Parker, Receiver of and for Anheuser-Busch Ice and Cold Storage Co., Inc., et al.*, v. *Becker, collector.*

No. 11821—*Becker, Collector*, v. *William P. Parker, Receiver of and for Anheuser-Busch Ice and Cold Storage Co., Inc., etc., et al.*

No. 11822—*William L. Parker, Receiver of and for Anheuser-Busch Ice and Cold Storage Co., Inc., etc., et al.*, v. *Becker, Collector.*

No. 11823—*Becker, Collector*, v. *Melrose Ice Cream Corporation, a corporation formerly existing under the laws of the State of New York, etc., et al.*

No. 11824—*Melrose Ice Cream Corporation, a corporation formerly existing under the laws of the State of New York, etc., et al.*, v. *Becker, Collector.*

No. 11825—*Becker, Collector*, v. *C. D. Russell, Liquidator of Anheuser-Busch Ice Cream and Beverage Co., etc., et al.*

QUESTIONS PRESENTED

As a result of a precipitate decline of nonalcoholic beverage sales in 1918 to 1920, from which the sales never recovered, Anheuser-Busch, Inc., accumulated a large supply of bottles and cases which it stored and of which it made only occasional use. It retained and actively used, however, a substantial quantity of such bottles and cases for its remaining business. In 1922 and 1923, and thereafter until 1932, the company attempted without substantial success to develop new beverages the production and sale of which would utilize the surplus bottles and cases. At the close of 1924, and

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No. 11826—*C. D. Russell, Liquidator of Anheuser-Busch Ice Cream and Beverage Co., etc., et al.*, v. *Becker, Collector.*

No. 11827—*Becker, Collector*, v. *C. D. Russell, Liquidator of Anheuser-Busch Ice Cream and Beverage Co., etc., et al.*

No. 11828—*C. D. Russell, Liquidator of Anheuser-Busch Ice Cream and Beverage Co., etc., et al.*, v. *Becker, Collector.*

No. 11829—*Becker, Collector*, v. *Adolphus Busch, III, et al., surviving members, etc., et al.*

No. 11830—*Adolphus Busch, III, et al., surviving members, etc., et al.*, v. *Becker, Collector.*

No. 11831—*Becker, Collector*, v. *Adolphus Busch, III, et al., surviving members, etc., et al.*

No. 11832—*Adolphus Busch, III, et al., surviving members, etc., et al.*, v. *Becker, Collector.*

No. 11833—*Becker, Collector*, v. *Springfield Ice and Refrigerating Co., etc., et al.*

No. 11834—*Springfield Ice and Refrigerating Co., etc., et al.*, v. *Becker, Collector.*

No. 11835—*Becker, Collector*, v. *Springfield Ice and Refrigerating Co., etc., et al.*

No. 11836—*Springfield Ice and Refrigerating Co., etc., et al.*, v. *Becker, Collector.*

again at the close of 1925, the depreciated cost of certain of the cases and bottles less their remaining junk value was charged off the books. The bottles and cases, however, were not removed or otherwise disposed of. The questions are:

1. Whether Anheuser-Busch, Inc., and its predecessor were entitled, under Section 234 (a) (7) of the Revenue Acts of 1924 and 1926 to deductions in 1924 and 1925 in excess of those allowed by the Commissioner on account of obsolescence of the cases and bottles.

2. Alternatively, whether Anheuser-Busch, Inc., and its predecessor were entitled under Section 234 (a) (4) of the Revenue Acts of 1924 and 1926 to additional deductions in 1924 and 1925 on account of losses alleged to have been sustained in respect of the cases and bottles.[2]

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations will be found in the Appendix, *infra*, pp. 22–29.

STATEMENT

The complaints in the District Court alleged that the Commissioner of Internal Revenue erred in the disallowance of obsolescence deductions claimed in consolidated income tax returns for 1924 filed by

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[2] The Circuit Court of Appeals found it unnecessary to decide other questions since its conclusions on the two questions above disposed of the entire controversy.

Anheuser-Busch, Inc., a Missouri corporation organized in 1875, hereinafter referred to as Anheuser-Busch, Inc. (1875), and its affiliated subsidiaries, and filed for 1925 by its successor, Anheuser-Busch, Inc., a Missouri corporation organized in 1925, hereinafter referred to as Anheuser-Busch, Inc. (1925), and its affiliates (R. 29–44, 39).[3] The deductions in question amounted to $1,381,451.31 for 1924, and $98,586.16 in 1925 (R. 35–36). The facts out of which the controversy arose may be summarized as follows:

The chief business of Anheuser-Busch, Inc. (1875), prior to the advent of national prohibition was the manufacture and sale of beer (R. 577). Bevo, a non-alcoholic malt beverage, had been developed in 1908 (R. 577). It was manufactured on a large scale in 1916, and reached peak production in 1918, after which sales declined drastically (R. 578). The sales of Bevo from 1916 to 1925 follow (R. 454–455):

Year	*Sales*
1916	2,282,404 Doz. Bottles
1917	7,063,812 Doz. Bottles
1918	10,449,152 Doz. Bottles
1919	3,904,316 Doz. Bottles
1920	3,044,006 Doz. Bottles
1921	794,378 Doz. Bottles
1922	732,302 Doz. Bottles
1923	726,348 Doz. Bottles
1924	709,008 Doz. Bottles
1925	721,848 Doz. Bottles

[3] In the interest of conciseness, references herein are to District Court case No. 11802, and to the cross-appeals therein docketed in the Circuit Court as cases Nos. 11816 and 11817.

The immediate cause of the decline in sales of Bevo after 1918 was a change in governmental regulations affecting the production of near-beer (R. 578–579). The change in regulations, occurring August 15, 1916 (R. 418), made it possible to manufacture alcoholic beer and then de-alcoholize it to the required alcoholic content (R. 578). In 1919, Anheuser-Busch, Inc. (1875), introduced de-alcoholized Budweiser beer and marketed it in beer bottles (R. 578–579). De-alcoholized beer was superior to Bevo as a beverage (R. 578). A further factor in the decline of Bevo sales was the competition of home brew (R. 579).

In August 1918, the purchase of Bevo cases was discontinued (R. 616). As the result of the reduced demand, a large surplus of cases and bottles accumulated [4] and were stored partly in unused buildings where they were protected from the weather, partly in sheds roofed over without sides, and partly in open bins wholly unprotected from the weather (R. 616). In 1920, the company authorized the sale of 1,404,000 dozen of the bottles at 12½¢ per dozen (R. 616). In 1921, 877,753 of the cases were rebuilt for other uses at a cost of 46¢ per case (R. 616).

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[4] Sales of Bevo included sales of the liquid content only and deposits were taken for the return of the cases and bottles (R. 579). After the sales, therefore, the cases and bottles were returned (R. 579).

By the end of 1921, the company's officials recognized that the decline in the volume of Bevo sales in comparison with sales of preceding years was permanent (R. 616). On December 18, 1923, the Directors priced 100,000 cases with the usual complement of empty bottles at $1 per case, but this price could not be obtained (R. 616). Upon representations of the plant superintendent that the equipment was depreciating rapidly, in April 1924, the sale of the same quantity of cases and bottles was authorized at 35¢ for each unit of one case and two dozen bottles (R. 616–617).

Meanwhile, following the permanent decline in Bevo sales, the company attempted to develop new products and beverages (R. 617). In 1922 and 1923 it developed and placed on the market several beverages, hoping to make use of the surplus Bevo cases and bottles (R. 617). In 1926 a malt tonic was placed on the market in the Bevo bottles, and as late as 1932, another product was marketed in them (R. 617, 620).

It was the practice of Anheuser-Busch, Inc. (1875), and of its successor to take physical inventories of all the company's supplies and equipment on hand in each department at the close of each calendar year (R. 614). The inventories show that the cases and bottles had accumulated in large quantities prior to December 31, 1920, increas-

ing in number until December 31, 1921, after which the quantities remained approximately the same from 1922 to 1926, inclusive (R. 614). The inventory figures were not entered in the books of account (R. 616).

The Bevo cases and bottles were not segregated upon the books of account as a separate asset, but they were carried in the same account with all other types of cases and bottles (R. 619). At the end of 1924 and 1925 the cases and bottles in controversy were charged off the books (R. 580, 581). No general instructions were given to the employees of the company to refrain from using the cases and bottles, which in fact could have been used at any time had there been an increased demand for any product which was being bottled and sold in them (R. 619). The cases and bottles were neither removed from the various locations where they had been stored, nor were they destroyed, sold, or disposed of during 1924 and 1925 (R. 617). Anheuser-Busch, Inc. (1925), continued in ownership and possession of the surplus cases and bottles until they were ultimately sold, discarded, destroyed by fire, or otherwise disposed of (R. 617).

Petitioner did not show the depreciation and obsolescence sustained during previous years, the amounts charged off, or the amounts allowed by the Commissioner upon the particular cases and bottles in controversy (R. 618). It was shown that on the

10-ounce cases and bottles as a whole, the company charged off no depreciation for 1916 or 1917 (R. 618). For 1918, 1919, and the first seven months of 1920, depreciation was written off on the basis of shipments at the rate of 3.4¢ per case and 1¢ per dozen bottles shipped (R. 618). For the last five months of 1920, and for the years 1921 to 1924, inclusive, the depreciation written off amounted to 5¢ per case and 2¢ per dozen bottles shipped (R. 618). The depreciation deductions claimed in the income tax returns for the various years were not classified in respect of the different kinds of cases and bottles, and, accordingly, the returns did not disclose how much depreciation applied to 10-ounce Bevo cases and bottles and how much applied to other equipment in the case and bottle account (R. 619).

Petitioners urged, and the trial court concluded, that the deductions constituted obsolescence deductible under Section 234 (a) (7) of the Revenue Act of 1924 (R. 37–39, 584). Petitioners urged further, and the trial court held, that the deductions also constituted losses sustained during the respective years, deductible under Section 234 (a) (4) of the Act (R. 38–39, 584–585). Upon review, the circuit court of appeals held that the allowance of the deductions either as obsolescence or as losses sustained during the respective years was not justified (R. 1129–1161).

The position of the Commissioner is set forth in a letter dated March 23, 1936, relative to peti-

tioners' claims for refund which he had rejected (R. 382–383):

> You contend that a further deduction should be allowed this taxpayer for the years 1924 and 1925 as loss of useful value on 10-ounce Bevo cases and bottles which were set aside by the corporation in the years in question, due to the fact that bottles and cases on hand exceeded the requirements of the declining trade.
>
> In rejecting the claims, the Bureau took the position that until the investment in cases and bottles was converted into terms of money by sale or other final disposition, there was neither loss nor gain and the income of the company for the year was neither increased nor decreased.
>
> In order to be allowed as a deduction for loss of useful value, a taxpayer must prove that there has been a loss and that it was sustained during the taxable year. While it is stated that certain cases and bottles were set aside and loss on abandonment claimed, it is conceded that these bottles and cases were not finally disposed of and were available for use thereafter had the necessity arisen. These types of bottles and cases were in use by the company for Bevo and other products through the year 1933. Under the circumstances it is held that no deductible loss was sustained in the years 1924 and 1925.

Although the Commissioner denied the deductions here in dispute in respect of these particular

cases and bottles, he did allow substantial deductions from income in 1924 and 1925 for depreciation and losses sustained upon the case and bottle account as a whole (R. 619).[5]

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[5] For 1924, the Commissioner allowed deductions aggregating $119,907.30 for 12-ounce cases damaged beyond repair and abandoned, and for 7-ounce bottles and cases abandoned and discarded (R. 253). The Commissioner also allowed the depreciation claimed in the return in the sum of $249,634.52 (R. 133). In fact, the Commissioner not only allowed the depreciation claimed, but also increased the allowance by $50,897.17, to provide for depreciation accruing at 16⅔ percent per year upon certain cases either discarded or damaged beyond repair and charged off the following year (R. 251, 253, 258, 259). The petitioners also obtained the benefit of a deduction for case and bottle expense amounting to $49,775.34 in addition to which repairs and maintenance were deducted as a separate item (R. 127). The total of the losses and depreciation thus allowed on cases and bottles for 1924, exclusive of other expenses, repairs and maintenance pertaining to them, aggregated $420,438.99.

For 1925, the Commissioner allowed losses amounting to $335,379.17 for 12-ounce and 10-ounce cases destroyed or damaged beyond repair and for defective 12-ounce bottles sold (R. 259). The deductions claimed for losses on cases and bottles amounted to $596,656.85 (R. 259). Of the amount disallowed, $261,277.68, the greater part represented additional depreciation allocated to 1922, 1923, and 1924 (R. 259). In addition to the deductions for losses, the Commissioner also allowed depreciation in the sum of $241,624.47 (R. 153, 258). Thus the depreciation and losses allowed for 1925 on the case and bottle account as a whole aggregated $577,033.64, exclusive of case and bottle expense deducted amounting to $122,842.58, and also exclusive of repairs and maintenance (R. 153).

ARGUMENT

The court below, reversing the district court,[6] held that neither under Section 234 (a) (7) of the Revenue Acts of 1924 and 1926, nor under Section 234 (a) (4), was the petitioner or its predecessor[7] entitled to the deductions claimed, representing the purported depreciated cost (less salvage) of cases and bottles stored as surplus supplies which was written off in 1924 and 1925.

We submit that the court below correctly held that the existence of the conditions affecting the petitioner's sales did not establish its right to deductions for 1924 and 1925 under either Section 234 (a) (7) or 234 (a) (4).[8] The two sections are mutually exclusive, *Real Estate Title Co.* v. *United States,* 309 U. S. 13, and for that reason the court's denial of the deductions under the two sections rested on somewhat different grounds.

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[6] Certain of the judgments entered by the district court against the Collector provided for recovery of taxes paid for 1926, since it concluded that net losses sustained by Anheuser-Busch, Inc. (1875) for 1923 and 1924 were allowable as deductions from income of Anheuser-Busch, Inc. (1925), for 1925 and 1926 (R. 585, 595).

[7] The petitioner claimed the deduction for 1925 and its predecessor for 1924. For convenience, both will be referred to herein as the petitioner.

[8] In holding that petitioners did not qualify for deductions under Section 234 (a) (7) the court below recognized that there had been a decline in volume of sales of the petitioner's product, Bevo, and that the decline was attributable to the Government's regulation issued in 1916 (R. 1151). Contrary to the petitioner's assertion (Pet. 22, 33–34), however, the

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Section 234 (a) (7) provides that the taxpayer may deduct a reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence. Article 161, of Regulations 65 and 69, dealing with depreciation generally, provides that the annual allowance for depreciation shall be the

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court did not hold that the changed regulation and resulting competition was not such a cause as would permit of a deduction for obsolescence under Section 234 (a) (7). Rather the court held that there was no such change of conditions affecting the bottles and cases with respect to which obsolescence was claimed as warranted the taxpayer's charging off in 1924 and 1925, respectively, roughly five-sixths of their cost as deductions for obsolescence (R. 1151–1152). The petitioner argues (Pet. 22, 34) that the court erroneously asserted that the loss of usefulness of these supplies was not "functional" within the rules laid down by this Court in *Real Estate Title Co.* v. *United States*, 309 U. S. 13. But actually the court below stated only that neither in the instant case nor in the case of *Real Estate Title Co.* v. *United States*, *supra*, was there "* * * a functional depreciation of the property *in the tax year commensurate with the claimed deduction* * * *." (R. 1156). [Italics added]. A reading of the decision of the court below clearly establishes that the court properly addressed itself not to the question whether at some earlier or later time there was a functional depreciation, but only to the question before it, whether there was such depreciation, and to the extent claimed, for the years 1924 and 1925.

Nor did the court below, as the petitioners argue (Pet. 23), hold that abandonment of an asset is a prerequisite to the allowance of an obsolescence deduction. The absence of abandonment was clearly not the major point on which the decision below turned. Hence, there is no conflict in principle between this case and the cases which petitioner cites.

amount which should be set aside for the taxable year in accordance with a reasonably consistent plan whereby the aggregate amount so set aside plus salvage value will at the end of the useful life of the property in the business equal the statutory basis of the property. Cf. *United States* v. *Ludey,* 274 U. S. 295, 300–301. Article 166, Regulations 65 and 69, dealing with obsolescence, provides that where the taxpayer shows that property is being affected by economic conditions that will result in its being abandoned at a future date prior to the end of its normal useful life, a reasonable deduction for obsolescence shall be allowed in addition to depreciation. These Regulations, the validity of which has not been challenged, require that the term of economic usefulness of property affected by obsolescence be established and we believe that the decisions of this Court in *Real Estate Title Co.* v. *United States, supra; Gambrinus Brewery Co.* v. *Anderson,* 282 U. S. 638; *Burnet* v. *National Industrial Alcohol Co.,* 282 U. S. 646; and *Burnet* v. *Niagara Falls Brewing Co.,* 282 U. S. 648, support this view.

Petitioner urges (Pet. 23) that the decision in this case is in conflict with the last three cases mentioned above and *U. S. Cartridge Co.* v. *United States,* 284 U. S. 511, because of the claimed holding of the court below that Section 234 (a) (7) authorizes only annual deductions similar to depreciation. The court below, however, did not rest its decision on the ground that obsolescence must be spread

over more than one year.[9] In substance, it held that the taxpayer had not established that the obsolescence of the cases and bottles in controversy was sustained in the years 1924 and 1925, respectively, and hence it held that the deductions claimed were not allowable.

This conclusion is plainly justified by the evidence in the record. The petitioner's Bevo sales had been affected by changes in the Government regulations issued in 1916 as the trial court found; the sales had declined precipitately in 1919–1921. Admittedly they fluctuated very little from 1921 to the end of 1925 (R. 454–455). This decline in trade resulted in an accumulation of more cases

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[9] In any event, a holding that obsolescence must be spread over more than one year for qualification under section 234 (a) (7) might well be correct, since obsolescence occurring wholly within one year might then more logically entitle a taxpayer to a deduction under Section 234 (a) (4) and Article 143 of Regulations 65 and 69. In *U. S. Cartridge Co.* v. *United States*, 284 U. S. 511, a deduction for obsolescence of certain buildings was allowable in 1918, because of the Armistice, though no period of obsolescence extending beyond a year had been established. When, as in the *U. S. Cartridge* case, a total loss of useful value occurs in one year, loss deduction, now an obsolescence deduction, should probably be allowed. Article 143, Regulations 65 and 69; 2 *Paul and Mertens*, Law of Federal Income Taxation (1934) Sec. 20.111. But this Court was not called upon to decide that question. The Government argued only that no obsolescence deduction should be allowed because by Section 234 (a) (8) of the Revenue Act of 1918, amortization of war production facilities was authorized. This Court held only that the amortization provision did not exclude an obsolescence allowance.

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and bottles than the petitioner could use in its business. The cases and bottles stored as surplus supplies, however, were of precisely the same character as other cases and bottles which the taxpayer was still using during the year 1924 and thereafter, both in the sale of Bevo and in the sale of other products. In 1926 a malt tonic was placed on the market in Bevo bottles and as late as 1932 another product was marketed in them (R. 617–620). Also, sales of surplus bottles (worth even as salvage 22 per cent of their average cost, according to the valuation assigned to them at the time by the taxpayer's officers) and of cases were being made in 1924 and thereafter (R. 616–617). In the final analysis the petitioner's claim to deductions for obsolescence in 1924 and 1925 rests solely on the fact that its officers decided in 1924 that a certain portion of the stored cases and bottles would not be used and that in 1925 they decided that an additional number would not be used.

The petitioner has been allowed losses on the sale of such cases and bottles as were sold or damaged beyond repair in 1924 and 1925 and previous years. It has also been allowed depreciation on those not sold or otherwise disposed of. It seeks in addition to claim a deduction for obsolescence in the amount of $1,381,451.31 for the year 1924 and of $98,586.16 for the year 1925. That the deductions claimed are unjustified in the light of the facts is plain when it is recalled that under the district court's decision

$74,987.70 was deemed a reasonable allowance for depreciation (including obsolescence) of the cases and bottles in controversy for the eight years 1916–1923, but that a deduction equalling roughly five-sixths of the cost was not excessive for one year, 1924. This obviously is not a spreading of depreciation, including obsolescence, over the useful life of the property pursuant to a reasonably consistent plan.

The petitioner's theory, however, is that the accrual of obsolescence was retarded during the years 1921–1923 while it was trying to develop other uses for the cases and bottles, that such products suddenly became demonstrated failures, and that the cases and bottles became useless and valueless in 1924 and 1925. But the record does not support the premises upon which this theory rests. On the contrary, until 1932 attempts to find uses for the cases and bottles continued. We submit that on the facts the only conclusion that can be reached is that the taxpayer has established no definite period of obsolescence and clearly has failed to prove that obsolescence occurred wholly in 1924 and in 1925 with respect to the portion of the bottles and cases written off in each respective year.[10]

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[10] Petitioner further urges (Pet. 22, 30–33) that the court below improperly disregarded the findings of the district court in respect of the facts relating to the retarding theory. But the court below adverted (R. 1140, 1152) though generally and without emphasis, to these factors and also expressly included in its opinion (R. 1136) the lower court's

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Similarly the decision of the court below on the second question is correct. Losses with respect to property are ordinarily allowable under Section 234 (a) (4) only when property is sold or otherwise disposed of. Article 143 of Regulations 65 and 69, Appendix, *infra*, however, provides for the allowance of a deduction for a loss of useful value and imposes certain conditions upon the allowance of this deduction: (1) The deduction is applicable to cases in which the loss of useful value is brought about through a change in business conditions; (2) the deduction is limited to cases in which the usefulness of capital assets is suddenly terminated; (3) the taxpayer must discontinue the business or discard the property permanently from use; (4) the loss must be claimed for the year in which the taxpayer discontinues the business or discards the property; and (5) any loss resulting from gradual processes for which depreciation deductions are

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findings on this point. We submit, however, that the court was justified in its treatment of these findings because of their diminished significance in the light of further findings, including those relating to continued attempts to use the bottles. And in any event, the ultimate issue of obsolescence in one for the reviewing court to determine. Compare *Real Estate Title Co.* v. *United States*, 309 U. S. 13, where the taxpayer vigorously urged (petitioner's brief, pp. 33–38) a similar contention upon which this Court, in affirming the decision of the circuit court of appeals, did not expressly comment.

authorized may not be allowed as loss of useful value.

It is submitted that the petitioner fails to satisfy the above requirements in critical particulars. There was no substantial change in business conditions in 1924 or 1925; the change in business conditions which brought about the permanent decline in Bevo sales had occurred several years before 1924. Nor was there an abrupt termination of the usefulness of the property in either 1924 or 1925. Indeed, there had been a termination of the use of the cases and bottles in the years 1919 to 1921, but this simply serves to demonstrate the shortcomings in the evidence introduced to establish that the losses were sustained during the years in question.

The Regulations further limit deductions for loss of useful value to cases in which the business is discontinued or the assets permanently discarded. Here, the Bevo business was not discontinued nor were the assets discarded until many years later. Instead, the assets remained during 1924 and 1925 in the same locations where they had been stored in previous years.

The petitioner also urges that the holding of the court below that abandonment or discarding of an asset implied relinquishment of ownership and possession through sale or destruction is in conflict with the decisions of other circuit courts of appeals

(Pet. 24).[11] The short answer to that contention is that the court did not so rule. Of course, property having a salvage value might under certain conditions be abandoned and the property be discarded without a sale, destruction, or final disposition thereof. But the cases cited are not in conflict, for the evidence here showed neither abandonment nor discard of the property during the years 1924 and 1925.[12]

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[11] The cases urged as in conflict are *Wheeling Tile Co.* v. *Commissioner*, 25 F. (2d) 455 (C. C. A. 4); *Liberty Baking Co.* v. *Heiner*, 37 F. (2d) 703 (C. C. A. 3); and *United States* v. *Hardy*, 74 F. (2d) 841 (C. C. A. 4). Petitioner also suggests that the holding is probably in conflict with the decision of this Court in *United States* v. *White Dental Co.*, 274 U. S. 398.

[12] The Collector's Statement of Points assigned numerous errors other than those noticed by the Court of Appeals (R. 6–15). It was pointed out that the amounts of the deductions allowed by the trial court were excessive due to errors in costs and in the adjustment of depreciation for prior years. It was pointed out further that under Section 202 (b) (2) of the Revenue Act of 1924, absence of proof concerning the amount of depreciation allowed by the Commissioner in previous years (R. 618) was fatal to the recovery of any refunds predicated upon the allowance of the deduction of $1,381,451.31 claimed for 1924. It was assigned as error that Anheuser-Busch, Inc. (1875), whose charter expired July 7, 1925, was held to be the same taxpayer as its successor. In the interests of brevity, we present no argument concerning these and other errors which the lower court found it unnecessary to consider. We believe, however, that the judgments in favor of the Collector may be sustained on grounds other than those assigned in the opinion.

CONCLUSION

The decision below is correct. It turns upon the peculiar facts of the case and does not present a question of general importance. There is no conflict of authority. The petition should be denied.

Respectfully submitted.

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SEPTEMBER 1941.